

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/2/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMON E PUELLO-CALCANO,

Plaintiff,

-against-

JOAN MCCAFFREY AND JOHN DOE,

Defendants.

1:20-cv-06662-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

On August 17, 2021, the Court ordered Defendant's counsel to advise Plaintiff of the identity of the administrator for Defendant's estate within one week. [ECF No. 18]. Pursuant to that order, Plaintiff was to substitute an administrator or explain why doing so was not possible on or before September 3, 2021. The Parties did not comply with that Order and instead filed a letter on August 30, 2021 advising their intent to settle. [ECF No. 19].

On October 7, 2021, the Parties filed a Stipulation of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). [ECF No. 21]. The Court denied without prejudice the stipulation, and directed the Parties to file a joint letter stating the basis for a stipulated dismissal pursuant to that rule where the named Defendant is no longer a party to the action. [ECF No. 22]. Thereafter, the Parties filed a joint letter on October 29, 2021 stating that "an administrator of estate would have to be substituted for proper dismissal of the lawsuit." [ECF No. 23]. The joint letter asked that this Court hold the matter open for ninety days to give "time for a motion for substitution to be made by the parties." *Id.* Following that ninety-day period, the Parties have not filed a motion for substitution or otherwise prosecuted this case.

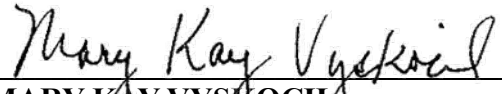
Pursuant to Federal Rule of Civil Procedure 25(a)(1), "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party." However, "[i]f the

motion is not made within 90 days of after service of a statement noting the death, the action by or against the decedent *must* be dismissed.” *Id.* (emphasis added). The notice of death was filed February 4, 2021 in this matter.

IT IS HEREBY ORDERED that this case be dismissed, and the Clerk of the Court respectfully is requested to close this matter.

SO ORDERED.

Date: February 2, 2022
New York, NY


MARY KAY VYSKOČIL
United States District Judge